

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

# IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION

) MDL NO. 1456  
) Civil Action No. 01-12257-PBS  
) Subcategory No. 03-10643

THIS DOCUMENT RELATES TO:

) Judge Patti B. Saris

*The City of New York, et al.*

v.

*Abbott Laboratories, Inc., et al.*

## OCTOBER 2011 STATUS REPORT ON BEHALF OF THE CITY OF NEW YORK AND NEW YORK COUNTIES

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for October 2011, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: October 3, 2011

Respectfully submitted,

**City of New York and New York Counties in  
MDL 1456 except Nassau and Orange, by**

**KIRBY McINERNEY, LLP**  
825 Third Avenue  
New York, New York 10022  
(212) 371-6600

By: /s/ Joanne M. Cicala  
Joanne M. Cicala

Ross B. Brooks, Esq.  
MILBERG LLP  
One Pennsylvania Plaza  
New York, NY 10119  
(212) 594-5300  
*Special Counsel for the County of Nassau*

Theresa A. Vitello, Esq.  
LEVY PHILLIPS &  
KONIGSBERG, LLP  
800 Third Avenue  
New York, NY 10022  
(212) 605-6205  
*Counsel for the County of Orange*

**October 2011 Status Report on Behalf of the  
City of New York and New York Counties**

**Summary Judgment and Daubert Motions**

On September 30, 2011, the court granted plaintiffs and defendant Sandoz's emergency joint motion to extend the summary judgment and Daubert briefing schedule. *See* Docket No. 7818, Sub-docket No. 302. The order modifies the deadlines as follows: (1) Summary Judgment and/or Daubert motions are due on or before October 28, 2011, (2) all oppositions to the motions are due on or before November 30, 2011, and (3) summary judgment and Daubert motion hearing is set for February 22, 2012.

**Voluntary Dismissal of Claims**

On June 2, 2011, plaintiffs filed a notice of voluntary dismissal of claims against defendant Endo Pharmaceuticals, Inc. *See* Docket No. 7576, Sub-docket No. 290. This notice remains *sub judice*.

On September 20, 2011, the court entered an order granting plaintiffs' stipulation of dismissal of claims against defendants Watson Pharmaceuticals, Inc. and Watson Pharma, Inc., f/k/a Schein Pharmaceuticals, Inc. *See* Docket No. 7800, Sub-docket No. 300.

**Settlement Order of Dismissal**

On July 7, 2011, the court entered plaintiffs' proposed settlement order of dismissal of claims against the following defendants: Alpharma, Inc., Purepac Pharmaceutical Co., Eli Lilly and Company, Endo Pharmaceuticals Inc., King Pharmaceuticals Inc., King Research and Development, Monarch Pharmaceuticals Inc., Merck & Co., Inc., Mylan Laboratories Inc., Mylan Pharmaceuticals Inc., UDL Laboratories Inc., Par Pharmaceutical Company Inc., Par Pharmaceutical Inc., Roche Laboratories Inc., Hoffman-La Roche Inc., Schering-Plough Corp., Schering Corporation, Warrick Pharmaceuticals Corporation, TAP Pharmaceutical Products Inc.,

Watson Pharmaceuticals Inc., and Watson Pharma Inc. The order provides that claims against these defendants shall be dismissed without costs and without prejudice to the right of any party, upon good cause shown, to reopen the action within ninety (90) days if settlement is not consummated. *See* Docket No. 7656, Sub-docket No. 296.

Plaintiffs and defendants today are filing a motion to extend the settlement order of dismissal as to Alpharma Inc., Purepac Pharmaceutical Co., King Pharmaceuticals Inc., King Research and Development, Monarch Pharmaceuticals Inc., Merck & Co. Inc., Mylan Laboratories Inc., Mylan Pharmaceuticals Inc., UDL Laboratories Inc., Par Pharmaceutical Companies, Inc., Par Pharmaceutical Inc., Roche Laboratories Inc., Hoffman-La Roche Inc., Schering-Plough Corp., Schering Corporation, Warrick Pharmaceuticals Corporation and TAP Pharmaceutical Products Inc.

**CERTIFICATE OF SERVICE**

I, Kathryn Allen, hereby certify that on the 3rd day of October, 2011, I caused a true and correct copy of the above October 2011 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: October 3, 2011

/s/ Kathryn B. Allen  
Kathryn B. Allen  
Kirby McInerney LLP  
825 Third Avenue  
New York, NY 10022  
(212) 371-6600